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JUN 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **IB Docket No. 98-60; Policies and Rules for Alternative
Incentive Based Regulation of COMSAT Corporation**

Dear Ms. Salas:

Enclosed for filing in IB Docket No. 98-60 you will find an original and nine copies of "**Reply Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc.**" and also a computer diskette containing the reply comments in "read only" format. Please date stamp the "stamp and return" copy of the reply comments for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Randolph J. May

Randolph J. May

Enclosures

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BEFORE THE
Federal Communications Commission **RECEIVED**
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JUN 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter

Policies and Rules for Alternative
 Incentive Based Regulation of
 Comsat Corporation

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IB Docket No. 98-60

REPLY COMMENTS OF
ABC, INC., CBS CORPORATION, NATIONAL BROADCASTING
COMPANY, INC., AND TURNER BROADCASTING SYSTEM, INC.

ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively the "Networks"), by their attorneys, hereby submit their reply comments in response to the initial comments submitted by COMSAT in the above-captioned proceeding.

I. BACKGROUND

In their initial comments, the Networks stated that they do not object to a change from traditional rate-of-return regulation to an appropriately-structured incentive-based regulatory regime for COMSAT, but that they do oppose any price cap regime that is not structured in a manner designed to lead promptly to lower rates for customers of COMSAT's non-competitive services. The Networks stated that an appropriately-structured price cap plan must include the following elements: (1) no pre-defined expiration period; (2) an aggressive annual downward adjustment to the price cap to account for productivity growth; and (3) a separate basket for occasional use video service.^{1/}

^{1/} Comments of the Networks, IB Docket No. 98-60, May 29, 1998, at 4.

With regard to annual downward rate adjustments to account for productivity growth, the Networks pointed out that in 1997 the Commission adopted an annual downward productivity adjustment of 6.5% for the dominant local exchange carriers.^{2/} And, they stated that, although they are not aware of productivity studies specific to the satellite industry, it is logical to assume, in light of the especially rapid advances in satellite technology, that an appropriate x-factor would be in excess of 6.5% annually.

II. ANY INCENTIVE-BASED PLAN FOR COMSAT SHOULD INCLUDE IMMEDIATE AND REGULAR RATE REDUCTIONS FOR OCCASIONAL USE VIDEO SERVICE

The proposal set forth in COMSAT's initial comments is not an appropriately-structured incentive-based regime, at least with regard to the non-competitive standard occasional use video service upon which the Networks remain dependent for operation of their broadcast and cable television networks. Most importantly, COMSAT fails to propose immediate and subsequent annual rate reductions for occasional television service, even though it is proposing such rate reductions for switched voice services.^{3/}

With regard to the immediate and regular 4% rate reductions for switched voice, COMSAT says its proposal is "an effort to meet the FCC's interests in obtaining reduced rates and establishing an incentive-based regulatory regime. . . ."^{4/} It goes on to assert that "[l]ow volume customers will enjoy rates that are guaranteed to drop at a rate of 4% annually [and] this

^{2/} See Networks Comments, at 5.

^{3/} COMSAT Comments, IB Docket No. 98-60, May 29, 1998, at 3-4.

^{4/} *Id.*, at 8. COMSAT proposes to implement an immediate 4% rate reduction for switched voice services upon approval of an order by the FCC and annually implement further 4% reductions on January 1 of each year. *Id.*

declining rate cap provides real incentives for COMSAT to continually improve its productivity and efficiency."^{5/}

The Commission must require COMSAT to implement immediate and regular rate reductions for the occasional use service. COMSAT offers only the flimsiest of excuses for not proposing to do so. First, COMSAT states that demand for occasional service on thin routes is quite low. Even if true, the Networks frankly fail to understand why this should mean that the smaller number of users of such non-competitive service should not receive the purported benefits of incentive regulation. The fact that the level of demand is "quite low" might argue for a relatively simple incentive-based regime rather than a very complicated one, but the Networks have not proposed a complicated regime.

Second, COMSAT implies that because it revised its tariff offerings in mid-1996 to offer a discount for certain non-standard occasional use services, it should not be required to implement rate reductions for its standard occasional use offering. As the Commission is aware, the non-standard offerings referred to by COMSAT for pre-scheduled and recurring bookings and for preemptible leases ranging from one week to six months generally are not substitutable for the standard occasional service which is available from any geographic location at any time in as little as one minute increments. Indeed, COMSAT's assertion that it was called upon to provide service to "only" 49 countries in single-carrier, non-competitive markets in 1997, 50 countries in 1996, and 49 countries in 1995,^{6/} illustrates the unpredictable nature of the

^{5/} *Id.*, at 11.

^{6/} *Id.*, at 6. By definition, the nature of occasional service is not such that COMSAT would be expected to provide service to the majority of the 142 non-competitive markets in each year. The Networks assume that COMSAT is not implying that service was provided to the same 50 countries each year.

occasional service that renders irrelevant the non-standard services to which COMSAT refers. In any event, to the extent that these generally non-substitutable offerings are at all relevant to the treatment of standard services, the fact that COMSAT implemented some tariff revisions two years ago has little bearing upon the formulation of an appropriately-structured price cap regime on a going-forward basis.^{7/}

Therefore, the Commission should not adopt a price cap regime for COMSAT unless it requires COMSAT to implement rate reductions for occasional service, just as COMSAT proposes to do for its switched voice customers.^{8/} With regard to switched voice service, COMSAT itself has acknowledged in the statements quoted above that downward rate adjustments must be an integral part of an **incentive-based** regime in order to satisfy the Commission's criterion that such regime encourage the carrier to realize efficiencies and to benefit customers. This is no less true for occasional services.

Indeed, the fact that COMSAT has not proposed to implement rate reductions for the occasional service supports the Networks' request that the Commission establish a separate

^{7/} In other words, the non-standard occasional offerings should be subject to programmed rate reductions as well.

^{8/} As the Networks demonstrated in their initial comments, the downward rate reductions should be in excess of the 6.5% x-factor adopted in 1997 for the local exchange carriers. In determining the appropriate level for the rate reduction, the Commission should have in mind the size of the reductions that were necessary in the late 1970s and 1980s to bring COMSAT's earnings down to a just and reasonable level. In short order in the aftermath of the 1978 Settlement Agreement in the COMSAT Rate Proceeding, COMSAT was forced to reduce its rates by over 75% in order to bring its rates down to acceptable levels. See Communications Satellite Corporation, FCC 87-388, CC Docket Nos. 80-634 and 85-268, January 28, 1998, at paras. 4-6. In the mid-1980s, COMSAT again was required to implement sizeable rate decreases and make refunds to customers on account of excess earnings. *Id.* While the extent of COMSAT's excess earnings in the 1970s and 1980s is not determinative of the extent of the downward rate adjustments the Commission should adopt now, this prior history of excess earnings should cause the Commission to be certain that it is protecting COMSAT's customers.

price cap basket for occasional video.^{9/} The Networks asserted that occasional use video service is presently relatively less competitive than switched voice service and that, absent a separate basket for occasional video, COMSAT might well target its rate concessions towards its switched voice customers. It appears that this is precisely what COMSAT is proposing, and the Networks reaffirm the need for distinct treatment for occasional video.

III. THE COMMISSION SHOULD USE NOTICE AND COMMENT RULEMAKING TO CONSIDER FUTURE CHANGES IN MARKET CLASSIFICATIONS

COMSAT suggests that the Commission allow it to modify the current list of non-competitive markets by filing tariff revisions which propose to delete such routes from the list. COMSAT would accompany its tariff filing by the submission of evidence concerning the new competition that it asserts justifies the deletion.

As the Networks explained in their initial comments, in their view the market power analysis employed by the Commission is too simplistic.^{10/} The Networks will not repeat the reasons here why the mere existence of one other competitor does not necessarily create effective competition, and why the Commission should consider factors such as access to the infrastructure of the foreign country by independent competitors. But the Networks' concerns in this regard are relevant to COMSAT's suggestions concerning the procedure to be followed in the future to determine whether a non-competitive market has become competitive. The Networks propose, at least for the time being, that COMSAT petition the agency to initiate a notice and comment rulemaking proceeding if it contends that certain markets have become competitive.

^{9/} See Network Comments, at 6-9.

^{10/} See Network Comments, at note 4.

While the Networks do not wish to become hung-up on "labels" or "forms of practice," it has been their experience that tariff proceedings are conducted under expedited procedures not as likely to elicit input from interested parties. They also are not subject to ex parte requirements that are applicable to informal rulemakings. The Networks have no interest in delaying future determinations as to COMSAT's market power and, indeed, they have acknowledged the appropriateness of such further reviews, but it is important that the process used be one in which affected parties are afforded adequate and effective notice of a proposed change^{11/} and a full opportunity to present their evidence in response to COMSAT's claims concerning market status.

IV. CONCLUSION

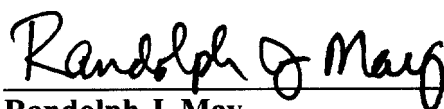
For the reasons stated in these reply comments and in their initial comments, the Commission should not adopt an incentive-based regulatory regime for COMSAT unless such

^{11/} For example, there are a relatively small number of U.S. customers of COMSAT's occasional service. It should be required to notify these customers in advance of proposed changes to the market classification list.

regime includes a requirement for immediate and regular rate reductions for occasional video service and is otherwise consistent with the views expressed by the Networks in their comments.

Respectfully submitted,

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CBS CORPORATION
NATIONAL BROADCASTING COMPANY, INC.
TURNER BROADCASTING SYSTEM, INC.**



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June 12, 1998

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CERTIFICATE OF SERVICE

I, Elyse N. Sanchez, do hereby certify that true and correct copies of the foregoing, "Reply Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc. and Turner Broadcasting System, Inc." were served by hand or first-class U.S. mail, postage prepaid, this 12th day of June 1998, on the following:

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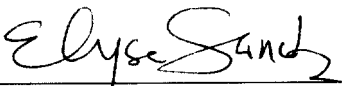
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